



Comptroller General  
of the United States

Washington, D.C. 20548

147723

## Decision

**Matter of:** Controls Engineering Maintenance Corp.

**File:** B-247833.2

**Date:** September 25, 1992

H. Eugene Myers, Esq., for the protester, William M. Dozier, Esq., Vandeventer, Black, Meredith & Martin, for Norva Marine, Inc., an interested party, Theodore H. Hoffmann, Esq., Naval Supply Center, Norfolk, Virginia, and Charles J. McManus, Esq., and Jonathan H. Kosarin, Esq., Naval Supply Systems Command, for the agency. Christina Sklarew, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Protest that an organizational conflict of interest existed during the procurement based on allegation that the proposed awardee's chief executive officer participated in the drafting of the solicitation's specifications is denied where the record contains no credible evidence to support the allegations and no specific facts are presented that could arguably give rise to a conflict of interest requiring the firm's disqualification from the competition.

2. Protester's submission of detailed basis of protest filed with protest comments is untimely where record shows information relates back to events during 3 years prior to issuance of solicitation and protester knew, or should have known, of these matters when it initially filed its protest. General Accounting Office Bid Protest Regulations do not contemplate the piecemeal presentation or development of protest issues.

### DECISION

Controls Engineering Maintenance Corp. (CEM Corp.) protests the Department of the Navy's proposed award of a contract to Norva Marine, Inc., under request for proposals (RFP) No. N00189-91-R-0181, which was issued by the Naval Supply Center, Norfolk, Virginia. CEM Corp. contends that Norva should have been disqualified from the competition because of an alleged organizational conflict of interest. We deny the protest in part and dismiss it in part.

The RFP was issued as a small business set-aside for maintenance services and parts for air conditioning equipment used on board aircraft carriers. Four offers were submitted by the closing date of January 23, 1992. When the Navy advised the offerors in February that H.M. Webb & Associates was the apparent successful offeror, Norva challenged Webb's status as a small business. Norva also filed a protest of the proposed award in our Office on March 5. On March 13, Webb withdrew its offer, and on March 17, Norva withdrew its protest. The contracting officer found that the remaining offers contained wide price disparities on certain contract line item numbers (CLINs), and notified the three remaining offerors on April 30 that he had decided to conduct discussions with each of them and to request best and final offers (BAFOs). Discussions were held on May 4, and BAFOs were requested on that date and submitted on May 13. Norva was found to be the apparent successful offeror. The Navy sent its pre-award notice to the other two firms on May 20. On May 26, CEM filed a protest challenging Norva's size status and filed this protest in our Office.

CEM protests that Norva should not have been permitted to compete for the award because of an alleged conflict of interest, based on CEM's belief that Norva's chief executive officer (CEO) assisted in the preparation of the RFP specifications. CEM contends in its protest that Norva's CEO publicly made statements to this effect, and concludes that inside information, such as the specific intent and requirements of the agency, would have been made available to Norva's CEO to assist him in drafting the specifications. The protester asserts that it was therefore improper to allow this firm to compete for the award.

The Navy denies that Norva's CEO, or any other Norva employee, participated in drafting the specifications. The contracting officer and contract specialist have provided sworn statements that "no one outside the Government participated in the preparation of the specifications or any other portion of the solicitation package." Norva's CEO has submitted a sworn affidavit stating that neither he, nor any other Norva employee, was involved in the preparation of the specifications for this procurement and denying that he ever made any statement to that effect.

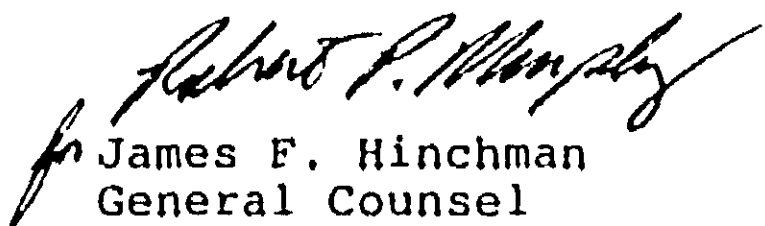
We do not believe CEM has shown any involvement or activity on Norva's part that would create a conflict of interest or otherwise require Norva's disqualification from the competition. First, based on the affidavits furnished by the Navy and Norva and the agency report, we find that the record simply does not support CEM's allegations concerning Norva's involvement. Second, even if Norva's CEO had been employed by the agency to draft the specifications, this by

itself would not necessarily result in a conflict of interest. The mere fact that an offeror's employee was familiar with the government's requirements and helped prepare the specification or statement of work does not establish a conflict of interest or confer an unfair competitive advantage. See generally Damon Corp., B-232721, Feb. 3, 1989, 89-1 CPD ¶ 113. CEM does not allege any specific facts which even suggest that an organizational conflict of interest exists, such as Norva's access to proprietary information obtained from a government official without proper authorization or to source selection information relevant to the contract that was not available to all competitors, and that would assist that contractor in obtaining the contract. See Federal Acquisition Regulation §§ 9.505(b)(2), 9.505-4; Scan-Tech Sec., B-243741, May 22, 1991, 91-1 CPD ¶ 501. CEM also does not argue that Norva's alleged involvement resulted in specifications that favor Norva or otherwise challenge the specifications as improper, nor has CEM shown any specific example of how Norva was benefited unfairly by its alleged participation; instead, CEM speculates that during Norva's alleged participation, the firm must have received "inside" information that was not available to other offerors. However, there must be credible evidence and not mere suspicion or innuendo that a conflict of interest exists before a firm may be excluded from a competition on this basis. Joseph L. De Clerk & Assocs., Inc.--Recon., B-233166.3, Apr. 6, 1989, 89-1 CPD ¶ 357. While the protester believes that an investigation by our Office would support its allegations, our Office does not conduct investigations for the purpose of establishing the validity of a protester's unsupported allegations. William B. Hackett & Assocs., Inc., B-232799, Jan. 18, 1989, 89-1 CPD ¶ 46.

In its comments on the agency report, CEM further elaborates on events that allegedly occurred beginning in 1988, more than 3 years prior to when the RFP was issued, including prior employment of Norva's CEO by another firm, the executive's work at that time on a marketing plan with the purpose of developing new business opportunities with the Navy, and the development during that time of a "social and business relationship" between the executive and one of the Navy's technical representatives allegedly involved in preparing the specifications used for this and two prior procurements, which the protester contends show "a pattern of insider dealing and potentially collusive bidding practices." This information, which explains why the protester believes the Norva CEO has acted improperly and why Norva should be disqualified from the competition, relates back to events during the previous 3 years and prior to the issuance of this solicitation. The protester knew, or should have known, these matters when it initially filed its protest. The protester does not argue otherwise. The

protester's submission of these allegations in its protest comments is therefore untimely. Our Bid Protest Regulations do not contemplate the piecemeal presentation or development of protest issues. 4 C.F.R. § 21.2(a)(2) (1992); Anderson-Elerding Travel Serv., Inc., B-238527.3, Dec. 19, 1990, 90-2 CPD ¶ 500. This portion of the protest is therefore dismissed.

The protest is denied in part and dismissed in part.

  
for James F. Hinchman  
General Counsel